Supreme Court of the United States.

No. 218.

THE NEW YORK LIFE INSURANCE COMPANY

vs.

CHARLOTTE SEYMS.

Error to the Circuit Court of the United States for the Southern District of Mississippi.

BRIEF FOR THE DEFENDANT IN ERROR,

BY

JOS. CASEY,

Judd & Detweiler, Washington, Printers.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

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The facts are correctly and sufficiently stated on the brief of counsel for plaintiffs in error, pp. 8 and 9.

I shall not enter into much discussion on the first point raised by the learned counsel for the plaintiff in error. In that they propose to ignore altogether the fact of the war of the rebellion so far as it may affect this case. To do so they have to change radically and fundamentally the nature and character of the contract. They regard the policy as a contract for a year's insurance, following the payment of the premium on the day designated. And each year a separate, distinct and independent contract. If the fact were as assumed, their position would be specious, if not sound.

But the first clause of this policy disposes of this question—

"This policy of insurance witnesseth that the New York Life Insurance Company, in consideration of the sum of

one hundred and forty-nine dollars and seventy-five cents to them in hand paid by Charlotte Seyms, wife of Henry S. Seyms, and of the annual premium of one hundred and forty-nine dollars and seventy-five cents, to be paid on the twenty-third day of December in every year during the continuance of this policy, do assure the life of Henry S. Seyms, bookbinder, of Vicksburg, in the county of Warren, State of Mississippi, for the sole use of the said Charlotte Seyms, in the amount of twenty-five hundred dollars, for the term of his natural life, commencing on the twenty-third day of December, 1859, at noon."

And the following:

"Or in case the said Charlotte Seyms shall not pay the said premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said Company shall not be liable to the payment of the sum insured, or in any part thereof, and this policy shall cease and determine."

The fallacy lies in assuming that the annual payments were conditions precedent to the contract of insurance; they were conditions subsequent, not to the inception of the contract, but to its extension and perpetuation.

A complete, executed contract for and during the natural life of Henry S. Seyms existed, subject to conditions subsequent, to wit, the payment of the annual premiums. By the terms of the contract, a failure to perform these conditions worked an annulment and forfeiture of the contract, and my learned friends contend that this clause was operative, although it was both illegal and impossible to perform the stipulated condition.

The case finds that the plaintiffs in error had no agent in Mississippi to receive the premium due December 23d, 1861, and the insured died on the 28th May, 1862; and no question is made on the sufficiency of the notice of the death, after the termination of the war.

The record presents two questions:

1st. Whether the contract is of such a nature that it was *ipso facto* abrogated by the outbreak of hostilities, which made the insurer and insured public enemies.

2d. Did the failure to pay the annual premium on the 23d December, 1861, annul the contract, and forfeit the policy?

I. Where the contract, though executory, is of such a character that its continued existence is not dependent on any intercourse between the parties, the effect of war is to suspend its operation during the continuance of hostilities. On the return of peace, it may then be enforced.

Bliss on Life Ins., 2 Ed., p. 659, and cases cited.

Such was held to be the law in the following cases, nearly identical in fact, wholly in principle, similar to the case at bar.

Griswold *vs.* Waddington, 16 John., 438.
Manhattan Life Ins. Co. *vs.* Warwick, 20 Gratt., 614.
New York Life Ins. Co. *vs.* Clopton, 7 Bush., 179.
Sans *vs.* N. Y. S. Ins. Co., 50 N. Y., 626.
Cohen *vs.* Mut. Life Ins. Co., 50 *Ibid.*, 610.
Hamilton *vs.* Mut. Life Ins. Co., N. J., 9 Bl. C. C., 234.

This last case affirmed by this Court.

II. The same authorities sustain the second point raised in this case.

See Bliss, p. 659, note 3.

It appears to me that the very principle of this case was decided by this Court in Semmes *vs.* The Insurance Company, (13 Wall., 158.) The policy in that case contained *a condition, that no suit should be sustained on the policy unless commenced within twelve months next after the loss shall occur, &c.* The Court held that this condition did not operate during

the war. The loss in that case occurred before the war, January 5, 1861. The Court went farther in that case than we ask to go in this. It not only held that the condition was suspended by the war, but that it was abrogated, and the insured could bring his action at any time before barred by the limitation of six years.

The principle of the cases which suspends the Statute of Limitations generally between belligerents during the war, applies here.

Hanger *vs.* Abbott, 6 Wall., 532.
Levy *vs.* Stewart, 11 *Id.*, 244.
The Protector, 9 Wall., 687.
Protector, 12 Wall., 700.

A bond executed before the war, payable by annual or semi-annual instalments, would only be suspended during the war.

So an agreement, by which a citizen of New York, had prior to the war, purchased a plantation in Mississippi, payable in annual instalments, the agreement to be forfeited if in arrear of any payment more than six months, was not cancelled, or abrogated, or forfeited during the war.

In all these instances, there is a suspension of the rights and obligations of the parties. Which are revived and reinstated by the cessation of hostilities.

The authorities cited in the brief of the learned gentlemen do not sustain the principle they contend for, with the exception of Tait *vs.* New York Life Insurance Company.

Mr. Duer says, on page 473, speaking of marine insurance:

"A war, if it does not extinguish, suspends the life of the contract; and whether its life would be restored by the cessation of hostilities, before the termination of the risks, is a question that has not yet arisen, and the contingency is so remote and improbable that it is unnecessary to be considered."

The cases which treat of the illegality of commercial intercourse between the belligerents, can play no part in this case, like those of Montgomery, Grossmayer, and Lapene, because there was no such intercourse here, and none was necessary to maintain unimpaired and intact the principal and original contract in this case.

Nor do the confiscation laws now have anything more to do with the case. The case cited of Miller *vs.* The United States, (11 Wall., 268,) required actual seizure before confiscation proceedings; then judicial proceedings and judgment. So all the cases. Nothing of the kind was done or attempted in this matter. But full, complete pardon and amnesty, with restoration of all rights lost by rebellion, extended to the defendant in error.

In every light I can look at it, the plaintiff in error has failed to maintain its assignments of error. And I ask that this judgment be affirmed.

Jos. Casey,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 218.

THE NEW YORK LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLOTTE SEYMS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

Supplementary Brief for the Defendant in Error

BY

JOSEPH CASEY.

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

SUPPLEMENTAL BRIEF.

I. The policy is one entire contract, not from year to year as the premiums shall be paid, but for the life of Henry S. Seyms, subject to be annulled or forfeited by failure to pay the annual premiums at the stipulated times.

Manhattan Life Ins. Co. *vs.* Warwick, 20 Gratt., 620.
Ruse *vs.* Mut. Ben. L. Ins. Co., 26 Barb., 556.
Hodson's Adms. *vs.* Guard. L. Ins. Co., 1 Biggelow, 219, and 97 Mass. Rep., 144.
Hillyard *vs.* Mut. Ben. Ins. Co., 37 N. J., 444.

II. The stipulation or condition was not to pay in New York. It was a contract made in Mississippi under the laws of that State, (see Record, p. 13,) and the premiums were payable there; and these plaintiffs in error must show that they had an agent there to receive the payments.

The Code of 1857 of Mississippi, under which this contract was made and existed, is as follows:

Section XI.

Agencies of Foreign Insurance Companies.

Art. 57. It shall not be lawful for any agent of any insurance company, incorporated by any other State than the State of Mississippi, directly or indirectly, to take risks, or transact any business of insurance in this State, without first procuring a certificate of authority from the auditor of public accounts; and before obtaining such certificate, such agent shall furnish to the said auditor a statement, under the oath of the president, or secretary of the company for which he may act, which statement shall show:

First. The name and locality of the company.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid up.

Fourth. The assets of the company, including,

1st. The amount of cash on hand, and in the hands of agents or other persons.

2d. The real estate unincumbered.

3d. Bonds owned by the company, and how they are secured, with the rate of interest thereon.

4th. Debts to the company secured by mortgage.

5th. Debts otherwise secured.

6th. Debts for premiums.

7th. All other securities.

Fifth. The amount of liability, due or not due, to banks or other creditors, by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense, waiting for further proof.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured in any one risk.

Twelfth. The greatest amount allowed by the rules of the company, to be insured in any one city, town or village.

Thirteenth. The greatest amount allowed to be insured in any one block.

Fourteenth. The act of incorporation of each company.

Which statement shall be filed in the office of said auditor, together with a written instrument, under the seal of the

company, signed by the president and secretary, authorizing such agent to acknowledge service of process, for and in behalf of such company, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of this State; and waiving all claim of error by reason of such service; and no insurance company, or agent of any insurance company, incorporated by any other State, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred and fifty thousand dollars of actual capital invested in stocks of at least par value, or in bonds or mortgages of real estate, worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor, and furnishing him with satisfactory evidence of such investment as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent applying for the same.

ART. 58. It shall be unlawful for any agent of any company incorporated by any foreign government other than a State of this Union, to transact any business of insurance in this State, without procuring a certificate of authority from the auditor, such agent having first filed under oath, in the office of said auditor, a statement setting forth the charter or act of incorporation of the company for which he or they may act, and the matters required to be specified by the last preceding article, and the authority therein mentioned, and furnished evidence to the satisfaction of the auditor, that such company has invested in the stocks of some one or more of the States of this Union, or of the United States, the amount of one hundred and fifty thousand dollars, and that such stocks are held by citizens of the United States, and the said agent of such company, filing said statement and furnishing evidence of investment as aforesaid, shall be entitled to a certificate of authority, in like manner as is provided for in the last preceding article.

ART. 59. It shall be the duty of the agent, in either of the foregoing articles mentioned, before taking any risks or transacting any business of insurance in this State, to file in the office of the probate court of the county in which he may desire to establish an agency for such insurance company, a copy of the statement required to be filed with the auditor as aforesaid, together with the certificate of said

auditor, which shall be carefully preserved for public inspection by said clerk, and also to cause said statement and certificate to be published in some newspaper, of general circulation in said country, for three successive weeks.

ART. 60. The statement and evidence of investment required by this act, shall be renewed annually, on the first day of March in each year. The first statement shall be made on the first day of April next, and the auditor on being satisfied that the capital, securities, and investments remain secure as at first, shall furnish a renewal of the certificate as aforesaid, and the agent obtaining such certificate, shall file the same, together with the statement on which it was obtained or renewed, in the office of the clerk of the probate court of the county in which such agency is established, and shall cause the same to be published in at least one newspaper of said county for three weeks.

ART. 61. Whenever any loss shall occur, of any property insured by any company authorized to take risks under this act, it shall be the duty of the agent by whom the insurance was made, to retain in his possession all moneys belonging to said company, which may then be in, or may thereafter come into his possession, till such loss is adjusted and paid. *Provided*, that if suit shall be commenced by the party insured, against such company, the agent may deposit in court the amount mentioned in the policy, to abide the event of the suit, or if the party insured shall not commence suit, within ninety days after the agent shall have given written notice to such party that the loss will not be paid, the agent may thereafter pay over to the persons entitled, the moneys of said company.

ART. 62. Copies of all papers required by this section, to be deposited in the office of the auditor, certified under the hand and seal of such auditor, to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner, and have the same force and effect, as the originals would have, if produced.

ART. 63. Any person violating the provisions of this section, shall upon conviction thereof, in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days.

ART. 64. The auditor, for receiving such statement, and issuing the license, shall receive the sum of two dollars and

fifty cents for each license so granted; and the clerk of the probate court, of each county where the agency may be located, for filing each statement, shall be entitled to one dollar and fifty cents.

The question, therefore, is, have the plaintiffs in error shown that they had an agent in Mississippi ready and prepared to receive the premiums which Mrs. Seyms was bound to pay.

On the contrary, it is expressly stated that they had no such agent there, (Record, p. 13.)

As a corporation created by and existing under the laws of the State of New York, it could have no legal existence beyond the limits of that State. (Bank of Augusta *vs.* Earle, 13 Peters, 586.) And this ruling, except as modified by intermediate cases, on questions of jurisdiction, is maintained and enforced in Paul *vs.* Virginia, (8 Wall, 168.)

There the question directly arose as to the right and power of the State of Virginia to impose upon corporations created by other States, conditions and restrictions similar to those in Mississippi, says Mr. Justice Field.

"*Such contracts* (policies of insurance) *are not inter-state transactions, though the parties may be domiciled in different States. The policies do not take effect, are not executed contracts until delivered by the agent in Virginia. They are then local transactions, and are governed by the local law.*"

See also, Daniels *vs.* Hudson River Co., 12 Cush., 417.
Fant *vs.* Miller, 17 Grattan, 47.
2 Pars. on Cont., §§ 583 and 587.

The same doctrine is held by the supreme court of Ohio.

"Companies complying with the statute referred to and doing business in this State (Ohio,) under licenses (required by statute) become in suits brought against them there personally amenable to the jurisdiction of the courts of this State, and are to be treated for purposes of suits as corporations of this State." (N. Y. Life Ins. Co., *vs.* Best, *et al.* Sup. Court Ohio, Dec. '72; 23d Ohio State, Rep. 105.) (Sec. 18, Act of Ohio Leg., April 27, 1872.)

III. Every intendment consistent with the contract will be made to prevent forfeiture.

McAllister *vs.* N. E. Mut. L. Ins. Co., 101 Mass., 558.
N. E. Mut. L. Ins. Co. *vs.* Hasbrook, 32 Ind., 447.
Helme *vs.* Phila L. Ins. Co., 61 Penn., 107.
Bliss on Life Ins., §§ 186, 190.
Thompson *vs.* St Louis Mut. L. Ins. Co., 52 Mo., 469.

JOSEPH CASEY,
For Defendant in Error.